



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/150102

PRELIMINARY RECITALS

Pursuant to a petition filed June 17, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on July 23, 2013, at Sheboygan, Wisconsin.

The issue for determination is whether the Petitioner was overissued BadgerCare+ (BCP) benefits in the amount of \$177.71 for the period of October 1, 2012 – October 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Kris Schmidt

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. In May, 2013, the agency issued a Notice of Overpayment and Repayment Agreement to the Petitioner informing him that the agency intends to recoup an overissuance of BCP benefits in the amount of \$177.71 for the period of October 1, 2012 – October 31, 2013. The agency notice

indicates that the Petitioner failed to report wages that went over 200% federal poverty level (FPL) in August, 2012 and that Petitioner's children would not have been eligible for BCP coverage during the period due to access to employer health care.

3. Petitioner's gross income in August, 2012 was \$5,834.74. Petitioner did not report to the agency that his income increased.
4. The capitation rate paid in October, 2012 by the agency for Petitioner's children was \$177.71. No claims were filed on behalf of the children with the BCP agency.
5. On June 17, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

49.497 Recovery of incorrect medical assistance payments. (1) (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s.49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to *report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.*
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to *report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.*

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

(emphasis added)

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, BCP Eligibility Handbook(BCPEH), §28.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a "no eligibility" case, to base the overpayment determination on the actual MA/BCP charges paid:

28.1 OVERPAYMENTS.

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. Concealing or not reporting income.
2. Failure to report a change in income.

3. Providing misinformation at the time of application regarding any information that would affect eligibility.

BCPEH, §28.1.

In this case, the Petitioner did not dispute that he did not report the increase in his income over 200% of the federal poverty level. He credibly testified that he wasn't aware that the coverage continued since he had access to health insurance through his employer. He assumed that coverage had ended.

The regulations require a recipient to report changes in income that affect eligibility. Because the Petitioner did not report the increase in his income, the agency continued to pay the capitation rate for the children's coverage. The agency presented evidence of the capitation rates paid during the period. No claims were filed and paid. The overpayment amount represents only the capitation rate paid on behalf of the children. The overpayment period begins October 1, 2012 based on the requirement that Petitioner report an increase in August, 2012's income in September, 2012. This would affect benefits beginning October 1, 2012.

Based on the evidence presented, I conclude that the agency properly seeks to recover an overpayment of BCP benefits representing capitation rates in the amount of \$177.71 from the Petitioner for the period of October 1, 2012 – October 31, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overpayment of \$177.71 in BCP benefits from the Petitioner for the period of October 1, 2012 – October 31, 2013.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

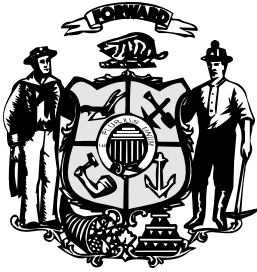
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of August, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 30, 2013.

Sheboygan County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability